

Legislative Developments in the Aviation Sector in 2008

by

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The Polish Aviation Law (in Polish: Prawo Lotniczne; PL) of 3 July 2002¹ was amended five times in 2008. In this period of time, the Minister of Infrastructure issued also seven relevant acts of secondary legislations (executive regulations). Moreover, the aviation sector was directly affected by a resolution of the Constitutional Tribunal which declared the incompatibility of one of the rules of the PL with the Polish Constitution.

The first set of amendments was introduced by the Act on the amendment of the Aviation Law of 25 April 2008². On its basis, Directive 2004/36/WE of the European Parliament and Council on safety of air craft in third states using airports in the European Union of 21 April 2004³ was transposed into the Polish legal system. Under the amendment act, Article 27 PL granted broader rights to the President of the Polish Civil Aviation Office (ULC), including the right to detain an aircraft or land maintenance machinery and the right to restrict the use of an airport if safety rules are violated. Moreover, Article 155 PL was amended and a new Articles 155a, 155b and 155c were introduced setting out: (i) the rules governing ULC inspections; (ii) restrictions that may be imposed on aircraft that violate safety rules, and (iii); data collection from those inspections. These amendments entered into force on 21 June 2008.

The second set of amendments was implemented by the Act of 10 June 2008⁴. On its basis, subsection 4 was added to Article 54 PL which distinguishes local airports and regional airports (including national). Moreover, Article 4 of

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¹ Journal of Laws 2006 No. 100, item 696, with subsequent amendments.

² Journal of Laws 2008 No. 97, item 625.

³ OJ [2004] L 143/76.

⁴ Journal of Laws 2008 No. 144, item 901.

the amendment act regulates the transfer of former military airport property to local governments, an issue of utmost importance for the aviation sector. According to the new rules, the Military Property Agency (AMW) will transfer its property to a governor who will then donate it to local governments (local, district or county). An executive regulation of the Minister of Transportation will list which properties will be transferred to local governments for public use. These amendments entered into force on 22 August 2008.

The third set of amendments was introduced by the Act on the amendment of the law on registered pledges of 5 September 2008⁵. On its basis, Article 38 PL was changed which precisely describes registered pledges on aircraft. This act entered into force on 11 January 2009.

The next set of amendments was implemented by the Act on the amendment of the law on free trade activity of 19 December 2008⁶. On its basis, Article 27 and 29 PL were changed by the granting to ULC employees of the right to control trade activities. These amendments entered into force on 7 March 2009.

The Act on the amendment of the civil service law of 21 November 2008⁷ introduced the fifth set of amendments to the PL in 2008. On its basis, Article 20 PL was changed which sets out the rules on the selection and appointment procedure of the ULC President. The selection procedure is very complex and specifies how the three short listed candidates are chosen. The final decision whom to appoint is taken by the Minister of Transportation. This act entered into force on 24 March 2009.

Furthermore, seven acts of secondary legislation (executive regulations) concerning the aviation sector were issued by the Minister of Infrastructure in 2008.

First, the regulation of 25 January 2008 regulates the amount, rules and terms of budgetary payments to the ULC to cover its running costs⁸.

Second, the executive regulation of 6 February 2008 on aviation rules⁹ refers to Annex No. 2 to the international civil aviation convention signed on 7 December 1944 (the "Convention"). It specifies that the Polish Air Navigation Services Agency will perform the competences and duties of an air traffic service (ATS) authority, as stated in the convention.

Third, the regulation of 17 June 2008 on the rules of air navigation service activities¹⁰ refers to Annex No. 11 to the Convention. It provides detailed

⁵ Journal of Laws 2008 No. 180, item 1112.

⁶ Journal of Laws 2009 No. 18, item 97.

⁷ Journal of Laws 2008 No. 227, item 1505.

⁸ Journal of Laws 2008 No. 17, item 105.

⁹ Journal of Laws 2008 No. 37, item 203.

¹⁰ Journal of Laws 2008 No. 111, item 709.

rules on the duties and competences of the ATS authority, the meteorological authority and the procedure of changing ATS routes.

Fourth, the executive regulation of 17 June 2008 concerns the rules of cooperation between the civil air navigation authority and the Polish air force¹¹. Its objective is to secure a specific role for the air defence system to be performed during peacetime. The cooperation shall take the form of: an exchange of information and experiences, training, cooperation on rescue operations, giving priority to EMER (emergency flights), SAR (rescue aircraft), HEAD (top officials aircraft) and all possible measures to ensure the safety of Polish air traffic.

Fifth, the regulation of 11 July 2008 on air transportation requiring special treatment¹² describes the limits and specifies the rules governing air transportation of special and dangerous materials as well as other items deserving special treatment such as human bodies, animals, medicine and chemicals. The aforementioned rules are based on Annex No. 18 to the Convention. The responsibility for the implementation and execution of this act lies with the ULC President.

Sixth, the executive regulation of 12 September 2008 concerns the establishment and setting up of the rules on the activities of the Air Space Management Committee¹³. The Committee was established under the executive regulation of the Minister of Transportation of 9 July 2003. Its main obligations include issuing recommendations and opinions to several relevant ministries and the ULC concerning draft executive regulation, air traffic procedures and space management. The Committee it is also obliged to conduct an annual evaluation of the air traffic management's work and the execution of its procedures. The Committee is working on the basis of rules adopted by the Minister of Transportation.

Seventh, the regulation of 25 November 2008 on the structure of Polish air space and on the detailed conditions and ways of its use¹⁴ determines the structure of Polish air space available for aircraft. It indicates which parts are under control of the Polish Air Navigation Services Agency and which are not controlled. It specifies also the rules and conditions of the use of the Polish air space by each of its users.

It should also be stressed that on 30 September 2008, the Constitutional Tribunal declared that Article 122a PL is not consistent with the Polish Constitution¹⁵. The abolished provision spoke of the right to destroy a civil aircraft if it is misused or, specifically, if it is used as a tool for terrorism.

¹¹ Journal of Laws 2008 No. 117, item 741.

¹² Journal of Laws 2008 No. 126, item 814.

¹³ Journal of Laws 2008 No. 173, item 1074.

¹⁴ Journal of Laws 2008 No. 210, item 1324.

¹⁵ Journal of Laws 2008 No. 177, item 1095.

